

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)	
)	
FM Translator Interference Rules)	MB Docket No. 18-119
)	
)	
To the Commission)	

COMMENTS OF SAM BROWN

As there are specific issues on which comment is sought, and tentative conclusions reached, these will be addressed, generally in the order that such comments were requested.

1. Channel Changes: Nearly all involved parties support the proposal that translators be allowed to move to any available frequency as a minor change for the mitigation of interference. This is “common sense” and should clearly be implemented. The Commission asks some important questions about the details, and as we know the devil generally hides there.

a. The proposal address only actual interference. However, later frustration may be best avoided by also allowing such a change for predicted interference, if the affected full-service station can demonstrate adequate listenership in an area that would receive co-channel or first-adjacent interference. This could be done by a combination of specific listener response to notice of the proposed translator and showing of an audience presence by patterns of contest entry, community-event support, advertising sales (or donations/underwriting for NCE’s), within the station’s contours as defined in Item 4, below.

b. The Commission proposes disallowing such changes when they would take a translator from a reserved to a non-reserved channel or vise-versa. This would seem overly restrictive. A change that moves a translator into the reserved band can only be done by a non-commercially licensed station; since it reduces flexibility and “stick-value” of the translator, such a change has little to no potential for abuse and should be simply allowed. A frequency change to put a translator into the non-reserved band could also be allowed with two restrictions: 1) a showing that no reserved band channel is available to serve a similar area, and 2) the “marrying” of the translator to both its parent station and to non-commercial service (much as AM-on-FM translators obtained in the recent windows are “married” to their primary stations).

2. Minimum Number of Listener Complaints: This is a concept which may be useful, if it can be applied in a fair and enforceable manner. To this end, some of the issues raised are critical:

a. A one-size-fits-all number may be easy to implement, but is unlikely to be fair. While the idea of market size or population-based limits seems logical, it would be extremely difficult administratively. One can easily imagine disputes about what constitutes a market, how to measure population in a coverage area, etc., which could spark multiple rounds of filings, requests for waivers for any variety of special circumstances, etc.

b. Having instead a clear set of technical criteria would be a more reasonably implemented way to achieve fair outcomes in the greatest number of cases. Three first-adjacent or co-channel complaints from within the affected station’s protected contour, or six such complaints from outside this contour would be a sensible standard. These could combine in a point-like system where the complaints from the protected contour count double toward a threshold of six.

c. Third adjacent complaints would not be considered. Second adjacent complaints inside the protected contour would be eliminated from consideration upon showing that the translator operator or parent station made a bona fide offer to help remedy these issues for the specific complaining listeners. Second adjacent complaints outside the protected contour would not be considered. On almost any properly-functioning receiver made in the last 40 years, third adjacent interference is never an issue unless the signal level is high enough to wipe out almost all reception (such as at or immediately next to a transmitting site), and second-adjacent interference occurs only on very low quality receivers in areas with extreme signal level discrepancies. In almost all cases, 2nd or 3rd adjacent interference is fault of the listener's receiver, and is not indicative of what the listening public generally will experience.

d. Translators and boosters are intrinsically different cases, even where the technology is similar. The most sensible way to handle boosters is to address almost all complaints of interference to or from them as being from the primary station. Because a booster is designed and allowed only to correct coverage deficiencies within the predicted contour of its parent-station, and is lower-powered than the parent, any signal outside that contour will drop off more quickly than the station's main signal would if the limiting terrain had not existed.

The only exception should be for first-adjacent or co-channel short-spaced stations. It is only in these cases the stations may have audience within their predicted service areas in locations which also fall into another station's predicted service area. In standard spacing, and even in section 73.215 spacing, protected contours of co-channel or first-adjacent stations do not even come close to overlapping. In summary, it does not make sense to apply translator rules to boosters.

e. The Commission writes wisely in rejecting the NAB's proposal to reject interference complaints from similar locations. It would be reasonable to refuse multiple complaints from the same household or dwelling unit – a family which has several members write complaints should not have more weight than a single complainant. However an apartment complex may have a certain ethnic or demographic group which especially benefits from a particular station's programming; it would be unfair discrimination to reject these complaints when they would have been accepted from neighbors in single-family homes.

f. The Commission considers the question of a time limit for actual interference complaints, but does not make a specific proposal. This is one of the very best ways to ensure a reasonable balance of protecting stations, while providing increased expectation of continuance to translators. A time limit should be implemented from the start of this rule for all existing stations, and a shorter limit for complaints about newly-established or modified translators. Perhaps a two-year window for existing situations, and one year for new or modified translators. These windows would be extended if the translator is silent or operating at reduced facilities after filing for a license to cover.

A new station or modified station should only expect protection to its regular protected contour from existing operating translators, and should have one year to seek such protection. Predicted interference complaints could be made if prohibited overlap by the translator would occur with the station's new CP for such facilities.

3. Complaint Requirements and Remediation Procedures: A proper set of complaint rules should both provide as much assurance as possible that the complaint is genuine, while also not making so difficult that it becomes nearly impossible for a listener to be heard and considered by the Commission.

a. The idea of a "signed declaration", if used, *must* include electronic means of filing such a complaint, whether by e-mail or on-line forms having equal weight to a physically-signed letter or document. To do otherwise would impose an outdated and undue burden on complainants and stations seeking relief from interference.

b. While it makes sense to make sure certain information is included, specific strict wording should be avoided, except in cases where the text is prepared by a station. A listener who simply makes his case

should not be ignored. Additionally, complaints should be accepted in the broadcast language of the station alleging interference, if the station provides English translations.

c. The NAB is correct in asserting that station-gathered complaints should be allowed and should not be construed to suggest the listener has a prohibited affiliation with the station, though the language of any standardized complaint or form letter supplied by the station should contain a statement to this effect, to which complainants would have to attest. Similarly, the Commission is correct in stating that social media connections also should not be considered a form of affiliation with the station. This should also be clarified to exempt on-air promoted “listener clubs” which anyone can join at no charge, as these are little more than mailing lists.

Small donations to non-commercial stations should also be exempt, perhaps at a \$50 per year limit. It could be an undue burden on an NCE’s ability to fight interference if its most loyal listeners are prohibited from making complaints.

d. The proposed standard of twice-per-month representing regular listening seems reasonable. This would cover listeners to specific programming or events, rather than just listeners to formats.

e. Complaints sent directly from listeners to the Commission should be merged with and added to the count of those received by or solicited by the station. While this may seem to raise some legal questions about parties-of-interest, or the roles of participants in the case; it is reasonable to affirm that the process should be seamless to the listener, and that the listener’s choice of complaint venue should not affect the weight or effect of his or her complaint. The average person is not familiar with this distinction and may not know the best way to have such a matter handled; but some may know just enough about the FCC to feel it is the appropriate recipient of an interference complaint.

f. Broadly eliminating the requirement that the complaining listener co-operate with remediation efforts is a very bad idea. This is a more complex matter than one that can be handled with a single solution.

For example, if 3rd adjacent channel complaints are considered at all (I would recommend against it), a single-case remediation offer should be the only obligation on the translator, and the complaint should not otherwise be included in any count. A 2nd adjacent complaint should only be valid if within the station’s protected contour and only if the complainant co-operates with attempts at remedy. In almost all cases, these complaints only occur due to very case-specific situations (poor receivers, improperly placed antennas, etc.); they do not indicate a broader problem.

When there are six first-adjacent or co-channel complaints, the translator operator should have the opportunity to offer solutions to complainants if it can be shown that it is an individual case, by U/D ratios and geographical separation of the complaint from others. As an example, if a complainant has the interference problem due to unique terrain (only house at the top of large hill, or only one shadowed in an unusual way) or proximity to the translator. Unless these showings can be made, it is reasonable to think that one complaint probably represents many listeners, since most people do not complain. In these cases, individual remediation and co-operation should not be alternatives. The translator operator may be able to fix six and leave hundreds without a desired signal.

4. Limits on Actual Interference Complaints: This is where the Commission needs to tread most carefully, as a wrong decision on this point could forever change the face of FM broadcasting in unintended ways, reducing the value of stations and service to the communities that listen to them, while depriving vast audiences of stations they have traditionally enjoyed.

It is ironic that Aztec Media is proposing a standard by which complaints could come from only protected contours, as the station complaining against them is the perfect “poster child” for the opposite view. It is a station that is a favorite to hundreds, if not thousands of listeners, with unique programming and significant community involvement in the Philadelphia area, which is outside of their 60dBμ contour. It is precisely for this and similar situations that we need these protections for stations.

In last year's comments, I proposed a 40dBμ standard as the outer limit for complaints. This is based on absolute minimum receivability. Beyond this level, consistent listening is unlikely to be possible, and it could be used to completely eliminate the eligibility for complaint. By contrast, 50dBμ is the level at which most car radios *scan* function will stop on a station. The manufacturers have used this rough threshold because a station at this level will generally be fully listenable in the car. If, as the Commission states, mobile listening is to be protected, a 50dBμ complaint limit is minimum protection that could be applied to achieve this.

One option to consider is a system where all complaints are accepted for first-adjacent and co-channel interference to the 50dBμ level, and those between 40 and 50 would either be discounted (each counts as half) or a greater showing of service to the affected area could be required (known listening data, community involvement, ad sales, donations, etc.).

In any case, the proposed 54dBμ limit would be highly destructive to many stations that significantly rely on listening outside this contour, and harmful to audiences which have come to expect and enjoy these stations. As examples:

- The Philadelphia and New York stations which have historically served the Jersey Shore could not protect themselves against translators.
- Many of the stations that constitute the Cape Cod radio market would not be protected throughout the whole market they serve.
- Frederick, Maryland could lose service from up to 9 of its top 15 rated stations*.

The Commission asks of the proposed 54dBμ rule, "Would this contour limit achieve our goal of safeguarding the technical integrity of the FM band?" This has a very simple answer: No!

The Commission also asks about allowing stations to provide evidence of listenership within the 54dBμ contour for a predicted interference complaint. This should be done at the 50dBμ level. The idea of "harmonizing" these rules with those for actual interference is a good one.

Conclusions:

- A. The increased flexibility for frequency-changes is a good idea.
- B. Translators and boosters are very different entities. In general, boosters should be treated as additional coverage of the main signal.
- C. **The most important single issue** raised is the geographical limit on complaints. A 54dBμ limit would destroy many stations and cause significant disruptions in service for vast numbers of listeners. A 40dBμ absolute limit would be reasonable, and some limits on complaints between 40 and 50dBμ may be sensible.
- D. A time limit on complaints would provide protection for stations, while affording certainty to translator operators.
- E. No third-adjacent complaints should be considered and second-adjacent complaints inside the station's regular protected contour should be considered as individual cases where the translator operator's offer or remediation would be considered sufficient to resolve them.

* Fall 2017 Nielsen Audio Quarterly Report 12+ Mon-Sun, 6a-12midnight as updated: 26-January-2018

Personal note:

As a long-time broadcaster, consultant, and former station-owner, I have seen these issues from a variety of perspectives. This is not being written on behalf of any specific client, but rather is made in the spirit of service to the radio industry and listeners. It is my hope that it helps.

Thank you for your consideration.

Respectfully submitted,



Sam Brown
Independent Broadcast Consultant

